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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 25 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

COMMISSIONER OF INCOME-TAX

Appearance:

1. INCOME TAX REFERENCE No. 25 of 1989
MR RK PATEL for Petitioner No. 1
MR BB NAIK with MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the assessee, the following questions have been referred for the opinion of this Court in respect of assessment year 1979-80 :-

"(1) Whether on the facts and in the circumstances of the case, the Tribunal was justified in confirming the disallowance of gratuity liability of Rs.34,882/- claimed by the assessee u/s. 28 read with sec. 37 of the Act ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the lower authorities were justified in disallowing sum of Rs.16531/- (wrongly mentioned at Rs.33050/- in the order of the Tribunal) incurred by the assessee as Dealers Aid u/s. 37(3A) of the I.T. Act, 1961 ?"

2. We have heard Mr RK Patel, learned counsel for the applicant-assessee and Mr BB Naik, learned counsel for the revenue.

3. Our attention is invited to the decision dated 29.4.1999 in Income-tax Reference No. 292 of 1984 between Innosearch Ltd vs. CIT, 251 ITR 384.

4. Having heard the learned counsel for the parties and having gone through the aforesaid decision, we see no reason not to follow the said decision.

In view of the above, following the decision of this Court in 251 ITR 354, our answer to question No. 1 is in the affirmative i.e. in favour of the revenue and against the assessee.

5. As far as question No. 2 is concerned, in the aforesaid decision on similar facts, this Court expressed the view that on consideration of material whether a particular item is aimed to attract the consumer or is merely an aid to selling is a question of fact and does not give rise to a question of law. Since the Tribunal has come to a definite conclusion that expenses on these items are primarily aided to attract the consumer and is part of publicity expenditure and since this is a conclusion of fact, it does not give rise to any question

of law.

The learned counsel for the assessee concedes that the facts in the instant case are similar to the facts in the case of Innosearch Ltd.

Accordingly, as answer to the question depends on the conclusion of fact reached by the Tribunal, we decline to answer the question since it, in our opinion, is not a question of law.

6. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-